

The Gazette



of India

EXTRAORDINARY

PUBLISHED BY AUTHORITY

NEW DELHI, FRIDAY, OCTOBER 1, 1948

GOVERNMENT OF INDIA

MINISTRY OF LAW

New Delhi, the 1st October 1948

ORDINANCE No. XXVI OF 1948

AN

ORDINANCE

to provide for the extension of the term of patent in certain cases.

WHEREAS an emergency has arisen which makes it necessary to provide for the extension of the term of patent in certain cases;

Now, THEREFORE, in exercise of the powers conferred by section 42 of the Government of India Act, 1935 (26 Geo. 5, c. 2), the Governor-General is pleased to make and promulgate the following Ordinance:—

1. Short title, extent and commencement.—(1) This Ordinance may be called the Patents (Extension of Term) Ordinance, 1948.

(2) It extends to all the Provinces of India

(3) It shall come into force at once.

2. Extension of the term of unexpired patents.—Notwithstanding anything contained in section 14 of the Indian Patents and Designs Act, 1911 (II of 1911), in this Ordinance referred to as the “principal Act”,—

(a) any patent, dated and sealed prior to the 1st day of January, 1948, the original term of which had not expired on or before the date of commencement of this Ordinance, shall have effect as if the term mentioned therein was twenty-one years instead of sixteen years, and any licence existing at that date which has been granted for the term of the patent shall be treated as having been granted for the term as so extended, if the licensee makes an application to the Controller in this behalf within three months from that date;

(b) any patent, the original term of which had been extended under the principal Act before the date of commencement of this Ordinance and the extended term of which had not expired at that date, shall have effect as if the extended term had been further extended by a period of five years, and any licence existing at that date which has been granted for the term of the patent, including the extended term, shall be treated as having been granted for the term further extended hereby, if the licensee makes an application to the Controller in this behalf within three months from that date.

3. Extension of the term of patent in other cases.—(1) Where—

(a) the original term of any patent as limited by section 14 of the principal Act, or

(b) the term of any patent extended under the provisions of section 15 of the principal Act or the term of any new patent granted under that section,

had expired at any time during the period commencing on the 1st day of January, 1948, and ending immediately before the date of commencement of this Ordinance, then, notwithstanding anything contained in the principal Act, the patentee in respect of the expired patent may present a petition to the Controller praying that a new patent may be granted for a further term, and, if the Controller is satisfied that by reason of circumstances arising out of the recent war in which His Majesty was engaged or by reason of any civil disturbances that have taken place during the period mentioned earlier in this sub-section, the patent had not been sufficiently remunerative, he may, subject to such conditions, restrictions and provisions as he may specify, order the grant of a new patent in respect thereof for any term not exceeding five years.

(2) Where any person other than the patentee in respect of the expired patent is subjected to loss or liability by reason of the grant of a new patent under the provisions of sub-section (1) any District Court having jurisdiction under the principal Act may, on application made in this behalf, determine in what manner any such loss or liability shall be borne, whether by the person to whom the new patent has been granted or by any other person.

4. Act II of 1911 to apply to petitions under this Ordinance.—Subject to the provisions contained in this Ordinance, the principal Act shall apply, so far as may be, to applications or petitions under this Ordinance, as if they were applications or petitions under the principal Act.

5. Power to prescribe fees.—The Central Government may make rules prescribing the fees to be paid in respect of anything to be done or any action to be taken under this Ordinance.

C. RAJAGOPALACHARI.
Governor-General.

K. Y. BHANDARKAR,
Secy. to the Govt. of India